

Commercial



Advertiser.

VOL. XXXV., NO. 6116.

HONOLULU, HAWAII TERRITORY, FRIDAY, MARCH 14, 1902.

PRICE FIVE CENTS.

HUMPHREYS FINDS SMITH GUILTY OF CONTEMPT

Gear at Once Imposes Sentence of Thirty Days Imprisonment as Punishment.

Writ of Habeas Corpus is Granted Later on by Chief Justice Frear and Editor Is Released.

WALTER G. SMITH, editor of the Pacific Commercial Advertiser, was adjudged guilty of contempt of court by Judge Humphreys yesterday, and by Judge Gear sentenced to thirty days imprisonment at Waioli Prison. Judge Robinson also sat upon the bench, and according to Humphreys, concurred in the findings.

Mr. Smith was detained in the court room until after 3 o'clock in custody of a bailiff, then the long delayed mittimus was served and he was taken to the police station, where half an hour later he was released upon a writ of habeas corpus. The writ which was issued by Chief Justice Frear, was made returnable on the first day of the next session of the Supreme Court, which is Monday, April 21st, adjournment having been taken yesterday for the term.

The court room and corridors were crowded when court convened yesterday morning. The time for the return was fixed at 9 o'clock, but it was fifteen minutes later before the three judges marched into the room. Humphreys in the lead, and took seats upon the bench.

Judge Gear opened the ball, by asking if any return had been made. W. O. Smith, appearing for the respondent, replied that W. G. Smith was in court, ready to put in an appearance. Davis stated that he would like to introduce some evidence, when Mr. Smith said that he first wished to present a motion to discharge the rule which he read as follows:

MOTION TO DISCHARGE RULE TO SHOW CAUSE.

New comes Walter G. Smith, the respondent in the above entitled contempt proceedings, and moves the court that the rule to show cause why the said respondent should not be punished for contempt herein, be discharged, upon the following grounds:

I—That the act complained of in the motion upon which said rule to show cause is based, is not, in law, a contempt of court for which the court has power to punish this respondent.

II—That this court cannot legally punish as for contempt a publication of the nature of that herein complained of, made in a newspaper and not done in the immediate presence of the court.

III—That the publication of a cartoon or picture, such as that complained of, done without knowledge by the person so publishing the same that a case pending before the court would or might be prejudiced thereby; or without knowledge that any such case was pending, is not a contempt of court, and cannot be punished as such.

IV—Under the statutes of the Territory of Hawaii, no publication out of court in relation to the court or to any of its members amounts to a contempt, and the same cannot be punished as such.

Honolulu, March 13, 1902.

WALTER G. SMITH, Respondent.

Here again asked for leave to introduce evidence, which Judge Gear refused to allow, stating that the motion was in the nature of a demurrer and must first be disposed of. He remarked further that the third paragraph was improper pleading, to which Mr. Smith assented. Judge Robinson then said that the court would give leave to amend by striking out that paragraph, which was accordingly done.

Judge Gear then announced: "With that part stricken out, we are all of the opinion that the motion will be denied."

Mr. Smith thereupon presented the return, reading as follows:

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT, TERRITORY OF HAWAII.

February Term, 1902.

Territory of Hawaii vs. William McCarthy, re Contempt of Walter G. Smith.

RETURN AND ANSWER OF WALTER G. SMITH.

Walter G. Smith, the respondent in the above entitled contempt proceedings, for return and answer to the citation and order herein, and to purge the contempt herein alleged, says:

That he is the editor of the newspaper called "The Pacific Commercial Advertiser," printed and published in Honolulu, in which was printed the

cartoon or picture referred to in the motion herein.

II—That at the time said cartoon or picture was published he did not know that the case of the Territory of Hawaii vs. William McCarthy, wherein the said McCarthy was charged with assault in the first degree, as alleged in said motion, was begun or was pending before the said Circuit Court or any other court.

III—That he knew that the said McCarthy had been tried in said Circuit Court upon a charge of "mayhem," and had been discharged by the court some days prior to the publication of said cartoon or picture, but did not know, nor had he been informed that another charge on the same state of facts had been entered against said McCarthy, and that the trial on said new charge had been begun or was pending.

IV—That said cartoon or picture related solely to said case of the Territory vs. William McCarthy, charged with "mayhem," which had been tried and determined, and was not published with intent to prejudice the jury or the public, or any one, respecting the merits of any case pending against said McCarthy, or to prevent or obstruct the administration of justice, or to show contempt of the Hon. George D. Gear, Judge of the Circuit Court, or of said court.

WALTER G. SMITH, Respondent.

At this point Judge Humphreys stepped in: "I notice in your answer," said he, "that you expressly refrain from disclaiming any intentional personal disrespect to presiding judge of this court. Is that intentional or inadvertent?"

Attorney Smith replied that it was intentional, and then inquired who was hearing the case, stating that he understood Judge Gear to be presiding. Judge Gear replied that all three judges were sitting together.

"As far as I am concerned, you will govern yourself accordingly," said Judge Humphreys.

"We have tried to treat the court with respect."

"The court demands such treatment as a right, and not as a privilege," said Humphreys, even more hotly.

"I treat the court with respect, and I demand the same treatment from the court," replied Mr. Smith, also with some show of anger.

Then Davis began the introduction of his testimony, to prove the alleged contempt; and for that purpose called the jurymen who had been impaneled to hear the case. Eleven of them testified that they had read the Advertiser and saw the cartoon. Then Davis read the words under the cartoon, "Bless you, McSwilligan, hits her again," with such vicious emphasis that everyone in the court room laughed, excepting the first judge. There were several outbreaks of laughter in the audience at the remarks of the witnesses, and Gear joined in as heartily as anyone else.

The jurymen all concurred in this testimony, and then Humphreys discovered an important omission, in that they failed to identify the subjects of the cartoon, and upon his advice Davis recalled the first three jurors to add these facts to the record.

The jurors all identified the cartoon as depicting Gear, but one of them, Cooley, didn't think the picture of McSwilligan looked anything like McCarthy, but thought it was more like a monkey. Davis said: "I don't think there can be any misunderstanding as to this meaning the court, and that McSwilligan was meant for McCarthy, and referred to the woman he hit, I mean he is charged with biting," the attorney corrected the admission immediately.

Cooley also denied that he was a regularly and legally impaneled juror but said he had been brought in by main force and compelled to serve. Mr. Smith objected to some of the questions of Davis as leading, whereupon that attorney became quite wrathful, and hissed the questions at the witnesses with a truly melodramatic turn at the defendant's attorneys.

The record of the first trial was next introduced in evidence, and Colonel Jones, as official court reporter, was called to testify to the ruling made by the court upon the motion in arrest of judgment. Mr. Jones had not been in court at the time the decision was rendered, and Judge Gear stated that he would take judicial knowledge of the fact, that he had discharged McCarthy on the ground that there was no such crime as mayhem in the Hawaiian statutes.

THE VOLCANO AT WORK



During the interruption while Colonel Jones was looking for his record, Attorney Smith arose and asked leave to amend the return, to show that there was no intention of showing disrespect to Judge Gear, and this was allowed.

Humphreys then explained why he had raised the question in the first place. "It was my purpose in calling attention to this matter to show that the manifest tendency of the cartoon was to sway and influence the jurors by showing that the presiding judge was in league with these criminals, and that therefore the jurymen should take the bit into their own hands, without reference to the instructions or to the judge."

"That is all the evidence we have to offer," here remarked Davis.

"That is of the former trial," said Humphreys, who evidently expected further testimony. Davis made no reply.

Mr. W. O. Smith then announced that he had no evidence to offer, having refrained from cross-examining the witnesses put on the stand by Davis.

Mr. Davis then began his argument, quoting frequently from an Ohio decision in a contempt case. He said that the court was created by the Organic Act, and consequently was a constitutional court, and that the legislature not having created the court, could not limit its powers.

He contended further that the publication was actual contempt, not constructive, and was not a report of court proceedings. This was a violation of the sixth amendment to the constitution guaranteeing every man a speedy trial, and the cartoon had interfered with this right, and tended to bring the court into ridicule, and interfere with the proper administration of justice.

He referred to the liberty of the press, granted by the constitution, but said that the right to a fair and impartial trial was more important, and this cartoon struck at the very fabric of our institutions. He referred also to his own case where he had been sentenced to prison for attacking the court in a bill of exceptions, and in which W. O. Smith, then attorney general, had prosecuted. The proper way to punish Judge Gear was by impeachment, said Davis, and an appeal to the President, and if he had done anything to justify it, to call a meeting of the bar and prefer charges.

"Judge Gear has done the best he could under all the circumstances, and with a meager salary of but \$250 per month," said Davis. He stated that Gear had done nothing for which he should be libeled, and had no reason for wishing to free criminals, but that this cartoon had overstepped the bounds, had brought the editor into active contact with the court. He closed with a reference to the "disgraceful, libelous and scandalous cartoon," and said that W. G. Smith was the only responsible party, while behind him sat those who egged him on, in an attempt

to throw the community into disorder. The proper way to secure Gear's removal, he said, was through an appeal to the President. "I feel that the court ought to be treated with respect, whether I like the judge or not. If the court is not a proper party to sit upon the bench, charges should be preferred," continued Davis; "but it seems to me that his character has been pretty well sifted by the time, though he is not an angel." (Laughter.)

Davis closed with a long harangue about his own professional honor, and how he had always treated the courts with respect, adding, by way of an afterpiece, a few shafts aimed at the attorney general.

Mr. A. Lewis followed with a brief argument, confined almost wholly to the legal aspect of the case. He said that they relied upon two simple propositions, that it was not within the power of the court to punish for constructive contempt, that the court was formed by the laws promulgated by the legislature of Hawaii, which laws had received the sanction of Congress, and that there can be no punishment for constructive contempt. The courts took their powers from the legislature, and certainly also must be limited by the same laws. He contended that the cartoon referred to the first McCarthy case, which was not pending, and there was no knowledge on the part of the respondent that the case was again on trial.

The case having been concluded and the decision rendered, there could be no contempt; and Mr. Lewis quoted from the decision in the famous "Chicago American" case, wherein Andy Lawrence had been sentenced for contempt and released. He quoted from the decision to show the freedom of the press, and the right to criticize the action of any judge, just as well as of the President or of the governor. This cartoon was entirely in reference to the first case, as alleged in the return, and the affidavit of Mr. Smith was contradicted.

"The editor of a paper is presumed to know what appears in his paper," said Judge Gear. "Here in the same issue is a half-column article on the second trial of McCarthy."

"The court will take judicial knowledge of the fact that it is impossible to delegate the absolute control of everything that appears in the modern newspaper to one man," added Judge Humphreys, "and the editor disclaiming knowledge of the publication is no more censurable than would be the general manager of a railroad if one of its conductors assaulted a passenger a hundred miles down the road."

Mr. Lewis in conclusion said that the answer of Mr. Smith was conclusive, being uncontradicted, and if he did not tell the truth he was liable to indictment for perjury.

W. O. Smith said that as a member of the bar he wished to disclaim any intention of attacking the authority of

the court, or detracting from its powers, but that he did not believe the cartoon to be contempt, and that the remedy sought was not proper; but that the court was not without proper remedies, if it sought to exercise it. Humphreys interrupted to say that this was not constructive contempt.

Mr. Smith replied that the judges had the same remedy as did the President or governor, and that the court's authority to punish for contempt was limited in the Hawaiian statutes to offenses committed outside the court room, judges had no more protection than did other officials or citizens.

Judge Humphreys stated that the section of the Hawaiian statute referring to constructive contempt was null and void, and not being a law could not have been carried over and reenacted by Congress. He said that the section was unconstitutional and consequently there could be no constructive contempt.

Mr. Lewis replied that it was a question of fact, as to whether or not the law had been declared unconstitutional, and said that he knew of no decision to that effect.

Humphreys replied that being unconstitutional it was void at the time of its enactment.

Mr. Lewis did not believe a law could be declared unconstitutional except by some action on the part of a court.

Humphreys then said that there were no Circuit Courts at the time of this act, and it referred only to the Supreme Court or District Courts. This was a matter of history, and W. O. Smith replied that there had been Circuit Courts in Hawaii since 1853. The court appeared satisfied with the statement, and Biting then began his argument. He referred to the cartoon as blasphemous, and said that all the facts had been admitted. He said that questions of law were not involved in the case at all, and concluded by saying that it was actual and not constructive contempt. At this point the court took a recess for fifteen minutes.

The court returned to the room in about twenty minutes. Judge Humphreys leading the way, with an armful of law books. Humphreys began immediately upon his ruling. He said:

The affidavit filed in this case seems to set out pretty fully all the pertinent, material and relevant facts. The charge of contempt whether it be held to be a direct or indirect contempt, a constructive contempt or a contempt committed in the face of the court, is charged technically in apt and proper words.

On behalf of respondent it is contended that this court is without the power which ordinarily inheres in all courts of record to protect themselves and to prevent the obstruction, embarrassment and hindrance of the due and orderly administration of justice. This contention is made under the act of

(Continued on Page 5.)

DESPERATE CONVICT ESCAPES

Woods, the Negro Life Termer, Is at Large.

LEAVES GANG AT KEWALO QUARRY

Armed Posse Scours Country All Night Long—Stole a Cane Knife.

WOODS, the desperate negro sentenced last year to life imprisonment for breaking into the Spreckelsville store on Maui and decamping with the safe containing \$1000, escaped from the gang of convicts working in the Kewalo quarry, behind Punchbowl, yesterday afternoon, and at 2 o'clock this morning was still at large.

There were about 50 prisoners in the gang, with three guards. About 3:30 o'clock Woods asked to be allowed to get a drink of water, and permission being granted, proceeded to a small shed some distance from where he was working, in which the water was kept.

This seems to have been the last seen of him. After a while his absence was noticed, and the prisoners were taken back to Oahu Jail as quickly as possible, and a telephone message sent to the police station telling of Woods' escape. At once every available man was collected and Deputy Sheriff Chillingworth and a posse set out for the quarry.

Until sundown the country in all directions was scoured, but only one trace of the fugitive was found. Not far from the quarry is a small house, inhabited by an old native woman. Woods visited the place, and finding no one at home, broke into it and ransacked the premises. When the officers arrived at the house they found the floor covered with clothing. The tenant of the house said that a dress and a cane knife had been taken away.

All night long a score or more of armed officers were posted at different points in the neighborhood. Officers were also stationed all over town at resorts frequented by the colored population. When the collier Alexander departed she was carefully searched and men were also detailed to watch the transports Egbert and Warren.

The country in the quarry district is densely covered with lantana, which makes pursuit a matter of extreme difficulty.

Woods has escaped from custody once before. About six months ago, after being committed for trial, he was brought to Honolulu for safe keeping. One day he scaled the high wall of Oahu Jail and escaped into the lantana at Kaili, where he was discovered in a pit and retaken at the point of a revolver.

After being sentenced to life imprisonment by Judge Kalua, he one day attacked the jailer at Wailuku Jail in a desperate attempt to escape, and had not assistance arrived in the nick of time, would have choked him to death.

During the first three months of his incarceration in Oahu Jail Woods wore a ball and chain which, as he behaved himself well, was taken off at the end of that time. It is thought by the police that his escape yesterday was the result of a plan in which some of his friends were concerned. If this is so, a horse may have been in waiting for him, and if Woods succeeded in making connections his capture will be that much more retarded. The fact that he took the cane knife from the woman's house, shows that he does not intend to be taken without a fight.

Woods is about twenty-eight years of age, 5 feet 10 inches tall, broad-shouldered and powerfully built, very black, and possessing an unusually high forehead.

ANOTHER MAN NOW MISSING

Half a dozen men of the crew of the transport Warren went to the police station last night and reported that one of their comrades named Connors had been missing for a week. They said that the description of the man found in the harbor last Sunday tallied with Connors. The sailors have the missing man's vest in their possession, and the police will compare it with the dead man's suit this morning.